

108TH CONGRESS  
1ST SESSION

# S. 53

To amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax for employee health insurance expenses paid or incurred by the employer.

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IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2003

Mr. DURBIN (for himself and Mrs. CLINTON) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax for employee health insurance expenses paid or incurred by the employer.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. CREDIT FOR EMPLOYEE HEALTH INSURANCE**  
4       **EXPENSES.**

5       (a) IN GENERAL.—Subpart D of part IV of sub-  
6       chapter A of chapter 1 of the Internal Revenue Code of  
7       1986 (relating to business-related credits) is amended by  
8       adding at the end the following:

1 **“SEC. 45G. EMPLOYEE HEALTH INSURANCE EXPENSES.**

2       “(a) GENERAL RULE.—For purposes of section 38,  
3 in the case of a small employer, the employee health insur-  
4 ance expenses credit determined under this section is an  
5 amount equal to the sum of—

6           “(1) the expense amount described in sub-  
7 section (b), and

8           “(2) the expense amount described in sub-  
9 section (c),

10 paid by the taxpayer during the taxable year.

11       “(b) SUBSECTION (b) EXPENSE AMOUNT.—For pur-  
12 poses of this section—

13           “(1) IN GENERAL.—The expense amount de-  
14 scribed in this subsection is the applicable percent-  
15 age of the amount of qualified employee health in-  
16 surance expenses of each qualified employee.

17           “(2) APPLICABLE PERCENTAGE.—For purposes  
18 of paragraph (1), the applicable percentage is equal  
19 to—

20           “(A) 25 percent in the case of self-only  
21 coverage, and

22           “(B) 35 percent in the case of family cov-  
23 erage (as defined in section 220(c)(5)).

24       “(3) PER EMPLOYEE DOLLAR LIMITATION.—  
25 The amount of qualified employee health insurance  
26 expenses taken into account under paragraph (1)

1 with respect to any qualified employee for any tax-  
 2 able year shall not exceed—

3 “(A) \$750 in the case of self-only coverage,  
 4 and

5 “(B) \$2,450 in the case of family coverage  
 6 (as so defined).

7 “(c) SUBSECTION (c) EXPENSE AMOUNT.—For pur-  
 8 poses of this section—

9 “(1) IN GENERAL.—The expense amount de-  
 10 scribed in this subsection is, with respect to any tax-  
 11 able year during which a small employer pays quali-  
 12 fied employee health insurance expenses for the ap-  
 13 plicable coverage percentage of the eligible qualified  
 14 employees of the small employer, the applicable per-  
 15 centage of the amount of qualified employee health  
 16 insurance expenses of each qualified employee.

17 “(2) APPLICABLE COVERAGE PERCENTAGE; AP-  
 18 PPLICABLE PERCENTAGE.—For purposes of para-  
 19 graph (1), the applicable coverage percentage and  
 20 applicable percentage shall be determined under the  
 21 following table:

<b>“Applicable coverage percentage:</b>	<b>Applicable percentage:</b>
At least 70 but not more than 80 percent .....	10 percent
At least 80 but not more than 90 percent .....	15 percent
At least 90 percent .....	20 percent.

22 “(3) ELIGIBLE QUALIFIED EMPLOYEE.—For  
 23 purposes of paragraph (1), the term ‘eligible quali-

1       fied employee’ means any qualified employee who is  
 2       not provided health insurance coverage during the  
 3       taxable year under—

4               “(A) a health plan of the employee’s  
 5       spouse,

6               “(B) title XVIII, XIX, or XXI of the So-  
 7       cial Security Act,

8               “(C) chapter 17 of title 38, United States  
 9       Code,

10              “(D) chapter 55 of title 10, United States  
 11       Code,

12              “(E) chapter 89 of title 5, United States  
 13       Code,

14              “(F) the Indian Health Care Improvement  
 15       Act, or

16              “(G) any other provision of law.

17       “(d) LIMITATION BASED ON WAGES.—

18              “(1) IN GENERAL.—The percentage which  
 19       would (but for this subsection) be taken into account  
 20       as the applicable percentage for purposes of sub-  
 21       section (b)(2) or (c)(2) for the taxable year shall be  
 22       reduced (but not below zero) by the percentage de-  
 23       termined under paragraph (2).

24              “(2) AMOUNT OF REDUCTION.—The percentage  
 25       determined under this paragraph is the percentage

1 which bears the same ratio to the percentage which  
 2 would be so taken into account as—

3 “(A) the excess of—

4 “(i) the qualified employee’s wages at  
 5 an annual rate during such taxable year,  
 6 over

7 “(ii) \$20,000, bears to

8 “(B) \$5,000.

9 “(e) DEFINITIONS.—For purposes of this section—

10 “(1) SMALL EMPLOYER.—

11 “(A) IN GENERAL.—The term ‘small em-  
 12 ployer’ means, with respect to any calendar  
 13 year, any employer if such employer employed  
 14 an average of 25 or fewer employees on busi-  
 15 ness days during either of the 2 preceding cal-  
 16 endar years. For purposes of the preceding sen-  
 17 tence, a preceding calendar year may be taken  
 18 into account only if the employer was in exist-  
 19 ence throughout such year.

20 “(B) EMPLOYERS NOT IN EXISTENCE IN  
 21 PRECEDING YEAR.—In the case of an employer  
 22 which was not in existence throughout the 1st  
 23 preceding calendar year, the determination  
 24 under subparagraph (A) shall be based on the  
 25 average number of employees that it is reason-

1 ably expected such employer will employ on  
 2 business days in the current calendar year.

3 “(2) QUALIFIED EMPLOYEE HEALTH INSUR-  
 4 ANCE EXPENSES.—

5 “(A) IN GENERAL.—The term ‘qualified  
 6 employee health insurance expenses’ means any  
 7 amount paid by an employer for health insur-  
 8 ance coverage to the extent such amount is at-  
 9 tributable to coverage provided to any employee  
 10 while such employee is a qualified employee.

11 “(B) EXCEPTION FOR AMOUNTS PAID  
 12 UNDER SALARY REDUCTION ARRANGEMENTS.—  
 13 No amount paid or incurred for health insur-  
 14 ance coverage pursuant to a salary reduction  
 15 arrangement shall be taken into account under  
 16 subparagraph (A).

17 “(C) HEALTH INSURANCE COVERAGE.—  
 18 The term ‘health insurance coverage’ has the  
 19 meaning given such term by section 9832(b)(1).

20 “(3) QUALIFIED EMPLOYEE.—

21 “(A) IN GENERAL.—The term ‘qualified  
 22 employee’ means, with respect to any period, an  
 23 employee of an employer if the total amount of  
 24 wages paid or incurred by such employer to  
 25 such employee at an annual rate during the

1 taxable year exceeds \$5,000 but does not exceed  
 2 \$25,000.

3 “(B) TREATMENT OF CERTAIN EMPLOY-  
 4 EES.—For purposes of subparagraph (A), the  
 5 term ‘employee’—

6 “(i) shall not include an employee  
 7 within the meaning of section 401(c)(1),  
 8 and

9 “(ii) shall include a leased employee  
 10 within the meaning of section 414(n).

11 “(C) WAGES.—The term ‘wages’ has the  
 12 meaning given such term by section 3121(a)  
 13 (determined without regard to any dollar limita-  
 14 tion contained in such section).

15 “(D) INFLATION ADJUSTMENT.—

16 “(i) IN GENERAL.—In the case of any  
 17 taxable year beginning in a calendar year  
 18 after 2003, the \$25,000 amount contained  
 19 in subparagraph (A) shall be increased by  
 20 an amount equal to—

21 “(I) such dollar amount, multi-  
 22 plied by

23 “(II) the cost-of-living adjust-  
 24 ment under section 1(f)(3) for the cal-  
 25 endar year in which the taxable year

1 begins, determined by substituting  
 2 ‘calendar year 2002’ for ‘calendar  
 3 year 1992’ in subparagraph (B) there-  
 4 of.

5 “(ii) ROUNDING.—If any increase de-  
 6 termined under clause (i) is not a multiple  
 7 of \$100, such amount shall be rounded to  
 8 the nearest multiple of \$100.

9 “(f) CERTAIN RULES MADE APPLICABLE.—For pur-  
 10 poses of this section, rules similar to the rules of section  
 11 52 shall apply.

12 “(g) DENIAL OF DOUBLE BENEFIT.—No deduction  
 13 or other credit under any other provision of this chapter  
 14 shall be allowed for that portion of the qualified employee  
 15 health insurance expenses paid for the taxable year which  
 16 is equal to the credit determined under subsection (a).”.

17 (b) CREDIT TO BE PART OF GENERAL BUSINESS  
 18 CREDIT.—Section 38(b) of the Internal Revenue Code of  
 19 1986 (relating to current year business credit) is amended  
 20 by striking “plus” at the end of paragraph (14), by strik-  
 21 ing the period at the end of paragraph (15) and inserting  
 22 “, plus”, and by adding at the end the following:

23 “(16) the employee health insurance expenses  
 24 credit determined under section 45G.”.



1 (c) NO CARRYBACKS.—Subsection (d) of section 39  
 2 of the Internal Revenue Code of 1986 (relating to  
 3 carryback and carryforward of unused credits) is amended  
 4 by adding at the end the following:

5 “(11) NO CARRYBACK OF SECTION 45G CREDIT  
 6 BEFORE EFFECTIVE DATE.—No portion of the un-  
 7 used business credit for any taxable year which is  
 8 attributable to the employee health insurance ex-  
 9 penses credit determined under section 45G may be  
 10 carried back to a taxable year ending before the date  
 11 of the enactment of section 45G.”.

12 (d) CLERICAL AMENDMENT.—The table of sections  
 13 for subpart D of part IV of subchapter A of chapter 1  
 14 of the Internal Revenue Code of 1986 is amended by add-  
 15 ing at the end the following:

“Sec. 45G. Employee health insurance expenses.”.

16 (e) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to amounts paid or incurred in tax-  
 18 able years beginning after December 31, 2002.

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